

PROPOSED SOLAR ORDINANCE

The following is a proposed text amendment to the Zoning Ordinance for Mercer County, KY in order to add a new Article pertaining to Residential Solar projects as well as Commercial /Industrial Solar Energy Generating Facilities. The proposed amendments make the following changes:

1. Rename currently titled Article XV – DEFINITIONS to ARTICLE XVI – DEFINITIONS with no change to the contents of the current definitions.
2. Retitle Article XV to **Article XV – Solar Energy Systems & Solar Energy Facilities**

Article XV

Solar Energy Systems (SES) & Solar Energy Facilities (SEF)

This article defines and sets forth the procedures and regulations for the approval, maintenance and upkeep of residential Solar Energy Systems as well as the procedures and regulations for the approval, maintenance, upkeep and decommissioning of Commercial/Industrial Solar Energy Generating Facilities.

15.1 DEFINITIONS FOR THIS ARTICLE

SOLAR ENERGY SYSTEM (SES) - The components and ancillary subsystems required to convert solar energy to electric energy suitable for use either by a private homeowner, or commercial energy producer. For the purpose of this definition, Solar Energy Systems are divided into three (3) classes as follows:

- a. **Level 1 - SOLAR ENERGY SYSTEM** – A roof mounted or ground mounted system for personal use on any principal residential structure, limited to an area up to fifty (50) percent of the footprint of the principal structure of the parcel, but not more than one (1) acre and not taller than twenty feet (20) tall above adjacent grade or any building integrated system such as shingles, hanging solar or canopy. Roof mounted systems shall not extend higher than the eave of the existing roof line. Setback requirements for a ground mounted Level 1 SES shall follow the existing principal structure zoning setbacks for the zoning district where the SES is to be sited and the property owner shall obtain a zoning permit from the Harrodsburg/Mercer County Joint Planning & Zoning Commission prior to commencing installation. Installers shall be required to submit notice to the local fire department of the installation of a private solar energy system (for fire safety and personnel protection).
- b. **Level 2 - SOLAR ENERGY SYSTEM** – Any ground mounted system not included in a Level 1 SES and meets the following criteria:
 1. In an Agricultural Zoning District (A-1, A-2 or A-3), the area of the SES shall not exceed one acre in size and shall be treated as a Conditional Use and require a Conditional Use Permit issued by the Harrodsburg/Mercer County Joint Board of Adjustments & Appeals (herein after referred to as the BOA). In an agricultural zoning district that exceeds one acre, a Site Plan shall be submitted to the Harrodsburg/Mercer County Joint Planning Commission for review and approval.
 2. In an Industrial Zoning District, the SES shall not exceed ten (10) acres in size and shall be treated as a Conditional Use accompanied by a Site Plan and require a Conditional Use Permit issued by the BOA.
 3. Setback requirements for a Level 2 SES shall follow the existing principal structure zoning setbacks for the zoning district where the SES is to be sited.
- c. **Level 3 - SOLAR ENERGY FACILITY (SEF)** – Any system that does not meet the parameters for a Level 1 SES or Level 2 SES. All Level 3 SEFs shall be conditional uses and

require a Conditional Use permit issued by the Harrodsburg/Mercer County Joint Board of Adjustments & Appeals. These systems are classified as privately owned utility/commercial scaled developments.

15.2 Criteria for a Level 3 SOLAR ENERGY FACILITY (SEF)

This section sets forth the procedure and regulations for the approval and maintenance of commercial scale ground mounted solar energy systems. This includes the components, equipment, and infrastructure required to convert solar energy to into electrical energy, store such energy and transmit said electrical energy onto the transmission grid that generates a design capacity of ten (10) megawatts or more.

To the extent that any provision of the Mercer County Zoning Ordinance is inconsistent with any other term or provision, the terms set forth in this section shall supersede and govern.

1. All level 3 Solar Energy Facility shall be considered Conditional Uses and only allowed within the following Zoning Districts: I-1 & I-2.
2. All level 3 Solar Energy Facility shall require a Conditional Use Permit issued by the Harrodsburg/Mercer County Joint Board of Adjustments and Appeals.
3. Any person or entity desiring to construct a Level 3 SEF shall submit the following documentation to the BOA:
 - a. SITE PLAN – A project Site Plan which shall be prepared by a professional engineer licensed in Kentucky and shall contain a visual depiction of the entire project, including all existing structures, proposed solar panel locations, power conversion structures and supporting ancillary equipment. It shall also include access and maintenance roads within the subject property. This plan shall depict the exterior project boundaries, including perimeter adjoining property owners with ownership information including parcel ID's for each adjoiner.
 - b. TOPOGRAPHICAL SITE PLAN - A separate site plan showing the topography elevations of the proposed site which includes any identified special flood hazard areas
 - c. SITE SCREENING PLAN – A screening plan shall provide for reasonable perimeter screening to reduce the effects to the viewscape of the SEF from occupied residences as well as publicly traveled right of ways. Applicant may satisfy the screening requirements by incorporating one or a combination of the following:
 - i. Where practical, any existing natural tree growth and landforms along the applicable boundary of the site shall be preserved and may create a sufficient buffer.
 - ii. A vegetative buffer consisting of shrubbery, trees, hedges or other non-invasive species that are at least four (4) feet in height when planted and will grow to at least eight (8) feet within 5 years of planting. Once fully grown, gaps between shrubs, trees, hedges or plants shall not be more than six (6) feet in width.

- iii. In lieu of vegetative buffers, an opaque fence may be used, provided, that the fencing material or veneer is, or has the appearance, of wood, stone, or other natural materials and is constructed so that it is at least eight (8) feet high when measured at grade.
- d. DECOMMISSIONING PLAN – A decommissioning plan prepared by a professional engineer or contractor which shall provide
 - i. The estimated cost to remove the SEF and related infrastructure, including but not limited to, foundations, pads, piers, underground collector lines, and permanent roads built for support of the SEF, all to a depth of four (4) feet below natural surface grade.
 - ii. The estimated cost to restore the subject property to a condition substantially similar to the condition of the subject property prior to commencement of installation of the SEF.
 - iii. The estimated salvage value of the SEF.

The estimated cost to decommission the SEF and restore the subject property minus the estimated salvage value of the SEF is referred to hereafter as the **Decommissioning Cost**.

15.3 Pre-Construction Documentation Requirements

Prior to issuance of zoning permit, the applicant shall provide the following documentation to the Planning Commission Director, or applicable governing body (as noted and/or required below)

1. **Decommissioning Security** – Security in the form of a performance bond or Irrevocable Letter of Credit in the amount of the Decommissioning Cost, if the Decommissioning Cost is a positive number, securing Owner's decommissioning obligations. This document shall name the Mercer County Kentucky Fiscal Court as beneficiary (Decommissioning Security). The Decommissioning Security shall be delivered to the County Judge Executive of the Mercer County Fiscal Court and the owner shall provide a copy to the planning director. The Decommissioning Security shall be issued for a period of not less than five (5) years. The owner shall be required to provide a revised Decommissioning Cost prior to the expiration of the current Decommissioning Security and deliver a new Decommissioning Security in successive five (5) year periods until the expiration of the project.
2. **Traffic Impact Map** – A traffic map that depicts the primary roads that will be used as construction vehicle routes for ingress/egress to and from the SEF for material and equipment deliveries. Owner shall work with the Mercer County Road Superintendent and planning director to coordinate potential impacts on traffic to accommodate school bus routes or planned public road construction.
3. **Pre-Construction Road Inspection** – Owner shall document and provide a detailed report of the pre-construction conditions of the existing roads identified on the Traffic

Impact Map and any other applicable road surface documentation the Owner produces in preparation for construction of the SEF, including copies of any documents such as cross-section surveys, centerline profiles, and culvert conditions.

4. **Road Repair Security** – The planning director may, in the director’s reasonable discretion, require the Owner to provide a Letter of Credit or performance bond in the required amount of time needed for construction, naming the Mercer County Fiscal Court as beneficiary, to secure Owner’s obligations to repair the Impacted roads in an amount equal to \$25,000 per mile (or portion thereof) of impacted roads, not to exceed \$250,000 (**Road Security**). Upon completion of the construction project of the SEF, a **Post-Construction Road Inspection** shall be required and provided by the Owner to the planning director, which shall include the same required documentation as the Pre-Construction Inspection. If the Post Construction Inspection report reveals that the Impacted roads are in substantially the same condition as they were prior to construction of the SEF, the County Shall release said bond within 15 calendar days.

15.4 Solar Energy Facility Requirements

All SEF installations shall comply with the following requirements:

1. **Height** – No SEF shall exceed twenty (20) feet in height measured from the highest edge of a panel to the ground beneath; provided, however, excluded from this height restriction are overhead powerlines, piles, operation and maintenance buildings, substations, and switchyards.
2. **Side & Rear Setbacks** – All SEFs, measured from the outer edge of the panels or perimeter fencing, whichever is closer to the applicable property lines shall be setback a minimum of fifty (50) feet from property lines of non-participating adjacent landowners. If the SEF is located on multiple adjacent tracts, no interior setbacks from contiguous parcels interior to the property lines shall be required.
3. **Front Setback** – All SEFs, measured from the outer edge of the panels or perimeter fence, whichever is furthest edge of the SEF, shall be setback at least eighty (80) feet from the centerline of any public road. This setback requirement does not apply to the SEF access and maintenance roads, nor shall it apply to collector and transmission lines of the SEF.
4. **Setback Variance(s)** – As it is understood that there may be unique topographical or geographical features that could be unique to the subject property, the owner may request variance on specific setbacks on a case by case basis as part of the Conditional Use Permit approval process.
5. **Occupied Residence Setback** – All SEFs, shall be setback a minimum of three hundred (300) feet from any occupied resident, measured from the outer edge of the panels or perimeter fence of the SEF, whichever is closer to the occupied residence, and the nearest edge of the occupied residence’s foundation.

6. **Compliance with Laws** – All SEF installations shall comply with all applicable federal, state, and local laws; provided, however, to the extent that any provision of this section that conflicts with any other provision of the Zoning Regulation, the provisions of this Article shall govern.
7. **Lighting** – SEF installations shall include outdoor lighting as required for security purposes or as required by federal, state or local laws to the extent commercially reasonable, all lighting shall be shielded and downcast to minimize light pollution off site of the SEF.
8. **Screening** – All SEFs shall incorporate the screening requirements as submitted and approved by the BOA.
9. **Signage** – Notwithstanding any other provision of the Zoning Regulations, all SEFs may include signage with warning and safety information and any other signage required by federal, state, or local law, or otherwise allowed under this Article.
10. **Assignment** – The Conditional Use Permit and subsequent Zoning Permits may be assigned to a successor Owner of the SEF, with the understanding that the new Owner shall be required to comply with all the terms and conditions of the original approval for the SEF.

15.5 Decommissioning and Abandonment

1. **Project Abandonment** – Owner shall decommission and remove the SEF in compliance with This Article of the Zoning Regulations within six (6) months after the date project abandonment occurs and restore the SEF site to as close as preconstruction condition as reasonably practical. “**Project Abandonment**” has deemed to occur when the SEF has not, for 12 continuous months:
 - a. Generated electric energy and delivered such energy to the utility grid,
 - b. Been decommissioned in accordance with the provisions of this ordinance, and
 - c. Such cessation of operations is not attributable to an event beyond the reasonable control of the owner.
2. **Updated Decommissioning Plan** - In connection with the Decommission Security, the Owner shall provide a revised Decommissioning Plan every 5 years on the anniversary of the issuance of the zoning permits until the SEF has been fully decommissioned and the project parcels are restored to their preconstruction condition. Such revised Decommissioning Plan may be submitted up to 180 days prior to the due dates.
3. **Updated Decommissioning Plan Contents** – The revised Decommissioning Plan shall include the same information as the original and shall provide updated Decommissioning Costs. Decommissioner Security shall be posted and/or revised in the amount of the new Decommissioning Cost with 60 calendar days after delivery of the updated Decommissioning Plan and shall replace the Decommissioning Security, If necessary.
4. **Decommissioning Security Release** – Within 45 calendar days after the date the SEF is fully decommissioned and the project parcels have been restored to a condition

substantially similar to the condition they were in prior to construction of the SEF, the County shall release the Decommissioning Security.

15.6 Application and Submission Fee

An application, review, hearing and inspection fee equal to: \$10,000 for a Solar Energy Facility with alternating current (AC) nameplate capacity up to 50 megawatts *plus* \$5,000 for each additional 50 megawatts threshold or portion thereof, shall be payable to the Board of Adjustments & Appeals as follows:

1. One -third of the total submission fee upon submission of the Conditional Use Application and required supporting documentation.
2. One-third of the total submission fee upon delivery of the submission of the pre-construction documentation.
3. Balance Due upon issuance of Zoning Permit.

15.7 Solar Energy Facility Approval Procedures

An application to construct a SEF under Article XV Section 15.1(c) shall be considered a Conditional Use and shall be heard by the BOA by Public Hearing with proper notice in accordance with the provisions of KRS 100.211. To request approval for the siting of the SEF, the owner/applicant shall file a Conditional Use Application with the staff of the Planning Commission and submit the following, which shall be considered under the following procedures:

1. **Filing** – Owner shall file six (6) copies of the Site Plan, Screening Plan, & Decommissioning Plan (collectively known as “Plans”) as required by Section 15.2(3) along with 1/3 of the required application and review fee. If the owner is not fee simple of the project parcel(s), the owner must also submit an affidavit of the owner of the project parcels consenting to the filing of the Plans and to speak on behalf of the owner regarding the SEF.
2. **Review** – The planning commission staff shall review the Plans and consult as necessary with the county road department, local officials, and other professionals support staff as necessary. Planning commission staff shall perform the required steps to give notice of, advertise the date, time, and location of the scheduled public hearing, which shall take place within thirty (30) days from date of receipt of a **complete** application.
3. **Staff Report** – At least five (5) days prior to the public hearing, the planning commission staff shall provide a written recommendation to the BOA and provide a copy for the Owner/Applicant.
4. **Board of Adjustments & Appeals Action** – At the public hearing, the BOA will hear testimony in the following order:
 - a. Presentation by Owner/Applicant
 - b. Testimony in Support of CUP from public
 - c. Testimony in Opposition to CUP from public

d. Response by Owner/Applicant to Opposition

Upon completion of the public comment & testimony, the public hearing portion of the hearing shall be closed. BOA members shall review staff report and recommendations. BOA members shall then act for approval, continuance, or disapproval. BOA may amend or modify the Plans (with the approval of the owner/applicant) if it finds the Plans do not comply with the requirements of this Article. The BOA shall take final action on the Plans and application within sixty (60) days from the date of the filing date of the complete application.

5. **Conditional Use Permit & Zoning Permit** – upon approval of the Conditional Use Permit by the BOA, the owner/applicant shall submit the Pre-Construction documentation to the staff of the Planning Commission as outlined in Section 15.3 along with the 2nd installment of 1/3 of the required application and review fee. Once received, the Conditional Use Permit shall be issued to the owner/applicant to be included in the package for final approval from the Public Service Commission (PSC) Siting Board. Upon successful approval by PSC, the owner/applicant shall provide copies of the PSC Siting Board approval for the SEF to the planning commission staff who shall issue the final Zoning Permit upon receipt of the last installment of the application and review fee.
6. **Minor Amendments** – A minor amendment to the Site Plan or Screening plan that has already been approved by the BOA may be approved by the planning director to expedite approval in those situations where amendments are of, in the opinion of the planning director, minor significance and generally relate to the shifting of previously approved spaces, locations of facilities or access; provided, that, such amendments do not cause the SEF to be out of compliance with any of the provisions set forth in Article XV of the Mercer County Zoning Ordinance. Any material modification that would result in changes not previously approved shall be required to amend the existing Conditional Use Permit prior to those changes taking place.